

REMARKS

Claims 1 and 61 have been amended to recite a composition and a method of employing a composition that "comprises . . . an aqueous phase . . .," respectively. Support for these amendments can be found throughout the specification including, for example, ¶¶ 0028, Example 1 (¶ 0150), and in original claim 42. Claim 42 has been canceled without prejudice. Applicant submits that no new matter has been added via these amendments to the claims.

35 U.S.C. § 103(a)

Claims 1-4, 6, 12, 15, 20-29, 31, 34-35, and 39-64 have been rejected solely under 35 U.S.C. § 103(a) as unpatentable over *Morrison*, WO 02/41854 ("Morrison") in view of *Kashihara, et al.*, WO 02/092047 ("Kashihara"). (Paper No. 20071205 at 3.)

In the view of the Patent Office, *Morrison* discloses "a water resistant anhydrous cosmetic composition comprising at least one linear dimethicone, at least one block copolymer film former chosen from tri-block film formers, multi-block film formers and radial copolymer film formers (See title and abstract)." (*Id.*, at 4.) The Office further determined that *Morrison* discloses that the "composition may further comprise a powder material including any cosmetic powder, pigments including treated pigments, additional film formers, sunscreens, wax, etc. (See page 8, Lines 5-10, 14-21, 28 and page 10, Lines 1-9)." (*Id.*, at 4-5.) The Patent Office has acknowledged, however, that *Morrison* differs from the claimed invention in that it "lacks a teaching of a composition comprising silicone elastomer powder as the cosmetic powder." (*Id.*, at 5.)

To fill the acknowledged gap, the Patent Office relies on *Kashihara* as disclosing "a cosmetic composition comprising silicone elastomer powder, water soluble polymer, water soluble

humectant, a nonvolatile silicone compound, and an aqueous carrier. (See title and abstract)." (*Id.*)

The Patent Office has determined that "it would have been obvious to one of ordinary skill in the art to combine Kashihsara et al. with Morrison to improve the cosmetic of Morrison." (*Id.*, at 6.) In the view of the Patent Office "[o]ne would have been motivated to do so because Morrison teaches that the anhydrous cosmetic composition can comprise any known cosmetic powder. Kashihsara et al. teaches that the silicone elastomer powder provides for improved coverage of wrinkles, fine lines and pores." (*Id.*) Applicant respectfully traverses.

Independent claims 1 and 61, from which all other rejected claims depend, have been amended to recite that the composition "comprises . . . an aqueous phase . . ." As the examiner acknowledges, however, Morrison discloses **anhydrous** cosmetic compositions. (See Title.) Morrison is silent as to any aqueous phase and all of the four examples of Morrison are anhydrous. Adding the silicone elastomer powders of Kashihsara to the compositions of Morrison, as suggested by the examiner, does nothing to fill this gap in Morrison.

In short, Morrison and Kashihsara, even combined as suggested by the examiner, do not disclose or suggest each and every element of the compositions and methods claimed, as amended. Accordingly, the rejection has been rendered moot. Withdrawal of the rejection is therefore requested.

Moreover, the claimed inventions require that the "powder is swelled with a swelling agent." (Claims 1 and 61.) As discussed in the specification:

Applicants have discovered that some solvents that cause block copolymers to gel, such as oils or other emollients, may not be compatible with other cosmetically acceptable solvents such as dimethicone,

especially high molecular weight dimethicones. Applicants have also discovered that these ingredients are compatible when the swelling agent is incorporated into the compositions in conjunction with the silicone elastomer powder. The results are that embodiments of the present invention have relatively little phase separation, more aesthetic appeal and better application and spreadability characteristics.

(Paragraph 0005.) However, neither, *Morrison* nor *Kashihara* discuss swelling the powder with a swelling agent. *Morrison* does not disclose or suggest any powder and *Kashihara* is silent as to any swelling of its powders. Moreover, the rejection is silent as to this claim limitation. Thus, *Morrison* and *Kashihara*, even combined as suggested by the examiner, do not disclose or suggest each and every element of the compositions and methods claimed, as amended. For this additional reason, the rejection does not present a *prima facie* case for obviousness and withdrawal is requested.

As it is believed that the rejection set forth in the Official Action has been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 11, 2008

Respectfully submitted,

By \_\_\_\_\_  
Stephen J. Brown

Registration No.: 43,519  
LERNER, DAVID, LITTBENBERG,  
KRMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicant

854708\_1.DOC